IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9062 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAHBUDDIN NIZAMUDDIN LUHAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2 & 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Kheda, at Nadiad, passed an order on 13th August, 1999, detaining the petitioner under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 ("PBM Act" for short), in exercise of powers under Section 3(2) of the said Act.

2. The grounds of detention of even date indicate that the petitioner was running a fair price shop at Thasra, under licence No.189 of 1977, which was valid upto 31st December, 2000. According to his records, 981 ration cards were registered with his shop. During inspection, it was found that out of 981 registered cards, 519 were genuine and the rest 462 were suspected to be bogus. Therefore, inquiries were made and in that inquiry, further 130 cards were found to be genuine and 332 were found to be bogus. But it was again decided to hold further inquiry. Out of 332 cards, further probe was decided in respect of 67 cards and a list for the purpose was prepared. These 67 cards were found to be genuine. No inquiry was made in respect of remaining 265 cards. The detaining authority, however, came to conclusion that the petitioner was indulged in jugglery of cards and had 290 bogus cards registered with him, which he was using for personal gain. This act on his part was detrimental to supply of essential commodities which was required to be prevented immediately and, therefore, he was ordered to be detained under the provisions of the PBM Act.

3. The petitioner challenges the order of detention on various counts in this petition under Article 226 of the Constitution. Mr. Prajapati, learned advocate appearing for the petitioner has, however, restricted his arguments to two aspects. The first is that there is non-application of mind on part of the detaining authority. In support of his argument, he submitted that the detaining authority has considered 290 bogus cards as the basis for arriving at satisfaction that the activities of the detenu were detrimental to supply of essential commodities, whereas this figure, nowhere, finds place during the entire investigation. Another fold of argument of learned advocate, Mr. Prajapati, is that a representation dated September 20, 1999 was made by the detenu to the Central Government. The same was received by the Central Government on September 24, 1999. Parawise remarks of the State Government were called for on 27th September, 1999, which were received on 1st October, 1999, and the representation was rejected on 5th October, 1999 and communicated to the detenu on 6th October, 1999. Mr. Prajapati, therefore, submitted that under the provisions of the PBM Act, the State Government is required to make a report to Central Government about the detention. Such report was made by the State Government on 21st September, 1999 and was received by

the Central Government on 24th September, 1999. Therefore, when the parawise remarks were called for, the Central Government already had the report of the State Government. As such, there was no need for calling the parawise remarks. Mr. Prajapati submitted that, even if it was found necessary to call for the parawise remarks, it should have been called for after application of mind by the competent authority. The competent authority of the Central Government has not filed any affidavit in reply and, as such, there is nothing to indicate application of mind by the competent authority while calling for the parawise remarks. In support of his arguments, Mr. Prajapati has placed reliance on decision of the Apex Court in the case of R. Paulsamy v. Union of India, (1999) 4 SCC 415. Mr. Prajapati submitted that the continued detention of the petitioner is, therefore, vitiated. The detention order may, therefore, be quashed and the petitioner may be directed to be set at liberty forthwith.

4. Mr. K.T. Dave, learned Assistant Government Pleader appearing for the State of Gujarat and the detaining authority, has opposed this petition. He submitted that the order is passed after due application of mind by the detaining authority. The petitioner is involved in an activity which is detrimental to supply of essential commodities and, therefore, technical aspects may not be permitted to be encashed by such persons. As such, if the order is seen, it is a detailed order which reflects that the detaining authority has taken into consideration all the relevant aspects and, it, therefore, cannot be said that there is non-application of mind.

5. Ms. Davawala, learned Addl. Central Government Standing Counsel appearing for the Central Government, has also opposed this petition. She has placed on record a submission based on telephonic instructions from respondent No.4. She submitted that the Central Government is exercising supervisory jurisdiction and, therefore, while deciding a representation made by a detenu, it is expected to hear the State Government and take a decision after considering by-partite versions and, therefore, on representation being received, parawise remarks are called for. She further submitted that the parawise remarks were called for by the Desk Officer on instructions of "higher officer" and the representation was, therefore, attended to with all seriousness and without any delay or negligence. She submitted that the petition may, therefore, be dismissed.

6. Having regard to the contentions raised by the

parties, it is amply clear that the detaining authority is the District Magistrate, Kheda, at Nadiad. The detention order was approved by the State Government on 21st September, 1999. By virtue of provisions as contained under Section 3(4) of the PBM Act, the State Government was expected to make a report to the Central Government within seven days thereof. Accordingly, the State Government has made a report on 21st September, 1999 itself, which has been received by the Central Government on 24th September, 1999. The representation made by the detenu was received by the Central Government on 24th September, 1999 itself and, as such, the Central Government had details of detention with it. If upon considering the representation made by the detenu, it was found that some aspects of the representation have not been dealt with in the report made by the State Government, the Central Government could have very well called for the parawise remarks. But, here, what persuaded the Central Government to call for the parawise remarks is not made clear by the Central Government as no affidavit is filed. The submission made by the learned counsel for the Central Government is only to the effect that the Central Government has to consider views of both the sides and, therefore, parawise remarks were called for as per the instruction from the higher officer to the Desk officer. In this view of the matter, keeping in mind the decision of the Apex Court in the case of R. Paulsamy v. Union of India, (1999) 4 SCC 414, it is difficult to accept that the representation, while calling for parawise remarks, was dealt with by the competent authority after due application of mind. The continued detention, therefore, would stand vitiated.

7. So far as another fold of argument of Mr. Prajapati is concerned, it is not required to be gone into as, for the reasons stated above, the petition deserves to be allowed.

8. In view of the above discussion, this petition is allowed. The impugned order of detention dated 13th August, 1999, passed against the detenu is hereby quashed. The detenu-Shahbuddin Nizauddin Luhar is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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